UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 11

VIRGINIA TRANSFORMER CORPORATION
Employer

And Case No. 11-RD-647

TERRY W. BAUCOM
Petitioner

And

IUE-CWA and its LOCAL 82167, AFL-CIO
Union[1]

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, Virginia Transformer Corporation, engages in the production of transformers in a manufacturing facility located in Roanoke, Virginia. IUE-CWA (hereinafter "the International") and Local 82167 (hereinafter "the Local") (collectively "the Union) represent the Employer's production and maintenance employees in the unit described below. The Petitioner, Terry W. Baucom, filed a decertification petition with the National Labor Relations Board (hereinafter "the Board") on March 7, 2003. A hearing officer of the Board held a hearing and the parties filed briefs with the undersigned.

As evidenced at the hearing and in the parties' briefs, the sole issue is whether, under the Board's contract-bar doctrine, a contract between the parties precludes an election. The Union contends that an election is barred under the contract bar rule because the parties reached complete agreement on a contract prior to the filing of the decertification petition. More specifically, the Union asserts that ratification of the contract was not a condition precedent to the formation of a binding contract. The Employer argues that a contract that is not signed by all

the parties prior to the filing of a decertification petition is not a bar to an election. I have considered the evidence and the arguments presented by the parties on the issue. As discussed below, I have concluded that the disputed contract does not serve as a bar because the contract was not signed by all the parties prior to the filing of the decertification petition. Accordingly, I have directed an election in the unit described below.

I. THE PARTIES' NEGOTIATIONS

The prior contract between the Employer and the Union was effective from March 6, 2000, through midnight on March 5, 2003. The parties started negotiating a successor contract on January 24, 2003. The Union negotiating team was comprised of International Representative and chief spokesman Thomas Thurston, and Local Representatives President Sherry Heck, Chief Steward Ken Spraker, and Secretary Myrtle Smith. Director of Human Resources and chief spokesman Larry Bush, Operations Manager Matt Gregg, and Human Resources Generalist Marie Hernandez made up the Employer's negotiating team.

The parties conducted approximately 12-15 bargaining sessions. On March 1, Bush, Gregg, and Thurston signed an agreement embodying the noneconomic terms. On March 5, 2003, the Employer made its "last, best, and final offer" which the Union accepted around 10:22 p.m., and the parties shook hands. No documents were signed that night. The next day, March 6, 2003, Thurston signed the agreement embodying the economic terms as did Bush and Gregg. According to Thurston, he wrote the words "tentative agreement" on the signature page because the document had not yet been reviewed for accuracy. Although local officers Heck, Spraker, and Smith were present at that time, they did not sign the agreement. According to Bush, Thurston asked Heck if she wanted to sign the contract at that point and she indicated that she wanted to wait until after the ratification vote. Heck denied making that statement; rather she claimed that the Local officers did not sign the contract because it was not necessary.

[1] The names of the International and the Local appear as amended at hearing.

The next day, March 7, 2003, Petitioner filed a decertification petition with Region 11 of the Board. At around 12:30 or 1:00 p.m., the Board notified Local President Heck that a petition had been filed. Heck notified Thurston who told her that the Local officers needed to sign the contract right away.

Bush received a fax from the Board that afternoon at 2:51 advising him that a decertification petition had been filed. Earlier that day at around 1:30 p.m. Spraker had telephoned Bush requesting that employees be allowed off from work the next day for the purpose of a ratification vote. Bush transferred the call to Gregg and Gregg told Spraker that the employees could receive time off between 45 minutes to an hour the next day in order to ratify the agreement.

Later that afternoon, Bush, Gregg, Hernandez, Heck, Spraker and Smith met, and Heck, Spraker, and Smith signed the draft agreement that Bush, Gregg, and Thurston had signed the previous day. Heck, Spraker, and Smith each wrote the date "3-7-03" beside their signatures. At that time, according to Heck, she stated that "it's a done deal; this contract is done." According to Bush and Gregg, upon signing Heck remarked "consider [the contract] ratified."

According to the Union, at the outset of negotiations, ratification of the contract by members was contemplated and a meeting was set on March 8 for that purpose. Heck testified that as negotiations progressed, the Union started to lose some of its membership. Heck further testified that on March 3, 2003, the membership told her to do whatever she needed to do to get a contact. According to Heck, she thereafter informed Thurston that he could go ahead and execute the agreement on the Local's behalf without a formal ratification vote. No ratification vote was ever held.

II. ANALYSIS

Before examining the specific facts of this case, I will briefly review the contract-bar doctrine. As shown above, the Union contends that there should be no decertification election

because the Board's contract bar rule precludes an election. Under the Board's contract bar rule, the Board will not direct an election when the affected employees are already covered by a collective bargaining agreement. City Markets, 273 NLRB 469, 469 (1984). The contract bar rule is not mandated by statute. Rather, it is a policy that the Board itself developed, in the earliest days of the Act, in an effort to stabilize existing employer-union relationships. Terrace Gardens Plaza, Inc. v. NLRB, 91 F.3d 222, 227 (D.C. Cir. 1996), enforcing, 315 NLRB 749 (1994). The burden of establishing contract bar rests on the party asserting it. The German School of Washington, D.C., 260 NLRB 1250, 1256 (1982).

An unexecuted contract may be valid and binding upon the parities. Electrical Workers IBEW Local 22 (Electronic Sound), 268 NLRB 760, 762-764 (1984), enforced, 748 F.2d 348 (8th Cir. 1984); Machinists Local 701 (Avis Rent A Car), 280 NLRB 1312, 1315 (1986). However, that is not the issue presented, as in the instant case, where contract bar is involved. Terrace Gardens Plaza, Inc. v. NLRB, 91 F.3d 222, 226, 228 (D.C. Cir. 1996), enforcing, 315 NLRB 749 (1994). Thus, in Appalachian Shale Products, 121 NLRB 1160, 1161 (1958), the Board, as part of a comprehensive reexamination of its contract bar policy, addressed certain rules it had developed in conjunction with that policy, including the long-standing requirement that "contracts not signed before the filing of a petition cannot serve as a bar." To facilitate a more expeditious application of the contract bar rule, the Board adopted a bright line rule: "[A] contract to constitute a bar must be signed by all the parties before a petition is filed . . . unless a contract signed by all the parties precedes a petition, it will not bar a petition even though the parties consider it properly concluded and [have] put into effect some or all of its provisions." Id. at 1162. Thus, "if there are named parties to a collective-bargaining agreement aside from the employer and the certified bargaining agent, they too must sign the contract before it may act

as a bar." Croathall Hospital Services, 270 NLRB 1420, 1422 (1984).[2] By requiring that an alleged agreement be signed by all the parties, the Board has provided a reasonable and objective means of expeditiously identifying established collective-bargaining agreements warranting insulation from election proceedings. To that end, the Board applies its signature requirement "without recourse to an analysis of the reasons why the contract was not signed by all the necessary parties." Bowling Green Foods, Inc., 196 NLRB 814, 815 (1972). Such an analysis, the Board recognizes, would reopen the door to potentially complex and lengthy litigation, thereby frustrating the Board's goal of expedited representation proceedings. Id. at 815 n.7.

With respect to the identification of the parties in the present case, I note that the preamble of the parties' disputed contract states as follows: "This Agreement made and entered into the 6th day of March, 2003, by and between Virginia Transformer Corp . . . and IUE the Industrial Division of the Communications Workers of America, AFL-CIO, and IUE-CWA Local 82167, hereinafter known as the "Union" . . . . " The recognition clause of the parties' contract states as follows: "The Company hereby recognizes the Union as the sole and exclusive collective bargaining unit covered by the certification of the [Board] in Case No. 11-RC-6311. . . . " The signature page contains the statement "In witness whereof, the parties hereto set their hands and seals this 6th day of March 2003." Below that are the words Virginia Transformer Corp. followed by the signatures of Director Human Resources Bush, and Operations Manager Gregg. The words IUE-CWA/AFL/CIO LOCAL 82167 appear with signature lines for Local Representatives Heck, Smith, Spraker, and International Representative Thurston. With respect to the parties' bargaining history, the record also reflects the designation

[2] The record does not disclose the name of the certified bargaining agent. I take judicial notice that the certified bargaining agent reflected on the certificate of representative issued February 1, 1999, is International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO. I note, therefore, that the International and the Local were not jointly certified. See Croathall Hospital Services, 270 NLRB 1420, 1423 & n.17 (1984).

of the International[3] and Local in the conjunctive as well as a similar signature page in the parties' prior contract. On the basis of the foregoing, I conclude that the contract here contains three named parties: the Employer, the International, and the Local . See Croathall Hospital Services, 270 NLRB 1420, 1421 (1984); H.W. Rickel and Company, 105 NLRB 679, 680-681 (1953).[4]

Here there is no question that a full and complete agreement was reached on all the terms of a new contract prior to the filing of the decertification petition. However, it is undisputed that at the time the decertification petition was filed on March 7, 2003, the agreement had been signed by only two of the three named parties to the agreement: the Employer (by Bush and Gregg), and the International (Thurston). The narrow issue then becomes whether the signature of Thurston alone without the signature of the Local is sufficient to bar the instant petition.

A similar contention was rejected by the Board in Croathall Hospital Services, 270 NLRB 1420 (1984). There, the parties' preamble stated that the agreement was entered into between the Employer and the "National Union of Hospital and Health Care Employees, A Division of RWDSU, AFL-CIO, and its affiliate District 1199C (hereinafter called the "Union") . . . . " Id. at 1421. The Board observed that in the recognition clause and throughout the agreement, District 1199C, the certified bargaining agent, and its parent organization, the National Union, were referred to jointly as the "Union." Id. In that case, at the time that the Petitioner filed a decertification petition, the only signatures on the agreement were those of the Employer's and the Local's representatives. Id. The Board held that even though the National Union was not the certified bargaining agent and did not play any role in the bargaining negotiations, as the National Union was one of three named parties to the contract, it was

[3] In that contract the International was denoted as the International Union of Electronic, Electrical, Salaried, Machines & Furniture Workers.

[4] Cf. Kit Mfg. Co., 150 NLRB 662, 672 (1964) (Where union was referred to in contract preamble as Sheet Metal Workers International Association, Local No. 213, AFL-CIO, Board concluded that the International was not a party

necessary that the National Union sign the contract before it could become a bar. Id. at 1422-1423. See also Filtration Engineers, Incorporated, 98 NLRB 1210, 1210-1211 (1952) (where International union and Local union were both named parties, no contract bar where Local union failed to sign the contract).

It is irrelevant that the Local may have designated International Representative Thurston to sign the contract on its behalf as the Local, a named party, did not sign the contract. Moreover, the Union's assertion that Thurston had such authority is belied by the Local's haste to affix their signatures on the contract immediately upon hearing that a decertification petition had been filed. In addition, the Union acknowledged that it never advised the Employer that the International had the authority to sign the contract on the Local's behalf. Nor is a different result dictated here by the fact that some of the contract provisions have already been put into effect, or that the signature page of the printer-ready version of the contract indicates a signature date of March 6, 2003, for all parties. The only pertinent factor is that the Local did not sign the contract before the decertification petition was filed. Accordingly, based on my finding above that the contract was not fully executed above by all the parties as required by the tenets enunciated by Appalachian Shale, I find that the disputed contract cannot constitute a contract bar. In light of that finding, it is unnecessary to resolve the Union's contention that the parties had a complete agreement and that ratification of the contract was not a condition precedent to the validity of the contract.

III. CONCLUSION AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

---

to the contract; the International and Local were not referred to in the conjunctive; rather, reference to the International merely indicated the parent name of the Local).

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Union involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employee of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time production and maintenance employees, including high voltage assemblers, core stackers, high voltage assembly set up employees, high voltage winders, high voltage winding set up employees, insulation cutters, welders, machine operators, final assemblers, painters, steam cleaners, sandblasters, low voltage core cutters, low voltage assemblers, low voltage core winders, maintenance helpers, maintenance mechanics, maintenance technicians, test technicians, shipping clerks, receiving clerks, materials clerk, the inventory control coordinator, utility workers, the materials expediter, the janitor, and leadmen employed by the Employer at its Roanoke, Virginia facility; excluding all temporary employees, manufacturing technicians, office clerical employees, and guards, professional employees and supervisors as defined in the Act.[5]

IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the IUE-CWA, Local 18627, AFL-CIO. The date time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to the Decision.

[5] The unit specified is that set forth in the parties' 2000-2003 expired contract notwithstanding the Petitioner's inclusion of the category of field service coordinators in his petition.

1. Voting Eligibility

Eligibility to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employee who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

2. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 12367 (1966); NLRB v. Wyman-Gordon Company, 395 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting processes, the names on the list should be alphabetized

(overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 4035 University Parkway, Suite 200, P.O. Box 11467, Winston-Salem, North Carolina, 27116-1467, on or before **April 4, 2003**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (336) 631-5210. Since the list will made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contract the Regional Office.

3. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be

received by the Board in Washington by **April 11, 2003**.

Dated at Winston-Salem, North Carolina, on the 28th day of March 2003.

_____

Willie L. Clark, Jr.
Regional Director
National Labor Relations Board
Region 11
4035 University Parkway, Suite 200
P. O. Box 11467
Winston-Salem, North Carolina 27116-1467

347-4001-2550-0000

347-4020-3300-0000